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HOUSE BILL 402

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Brian K. Moore

AN ACT

RELATING TO CRIMINAL SENTENCING; IMPOSING A LIFE SENTENCE FOR CHILD ABUSE RESULTING IN DEATH WHEN THE CHILD IS UNDER TWELVE YEARS OLD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-6-1 NMSA 1978 (being Laws 1973, Chapter 360, Section 10, as amended by Laws 2004, Chapter 10, Section 1 and by Laws 2004, Chapter 11, Section 1) is amended to read:

"30-6-1. ABANDONMENT OR ABUSE OF A CHILD.--

A. As used in this section:

(1) "child" means a person who is less than eighteen years of age;

(2) "neglect" means that a child is without proper parental care and control of subsistence, education,

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1 medical or other care or control necessary for his well-being
2 because of the faults or habits of his parents, guardian or
3 custodian or their neglect or refusal, when able to do so, to
4 provide them; and

5 (3) "negligently" refers to criminal
6 negligence and means that a person knew or should have known of
7 the danger involved and acted with a reckless disregard for the
8 safety or health of the child.

9 B. Abandonment of a child consists of the parent,
10 guardian or custodian of a child intentionally leaving or
11 abandoning the child under circumstances whereby the child may
12 or does suffer neglect. Whoever commits abandonment of a child
13 is guilty of a misdemeanor, unless the abandonment results in
14 the child's death or great bodily harm, in which case he is
15 guilty of a second degree felony.

16 C. A parent, guardian or custodian who leaves an
17 infant less than ninety days old in compliance with the Safe
18 Haven for Infants Act shall not be prosecuted for abandonment
19 of a child.

20 D. Abuse of a child consists of a person knowingly,
21 intentionally or negligently, and without justifiable cause,
22 causing or permitting a child to be:

23 (1) placed in a situation that may endanger
24 the child's life or health;

25 (2) tortured, cruelly confined or cruelly

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1 punished; or

2 (3) exposed to the inclemency of the weather.

3 E. Whoever commits abuse of a child that does not
4 result in the child's death or great bodily harm is, for a
5 first offense, guilty of a third degree felony and for second
6 and subsequent offenses is guilty of a second degree felony.

7 ~~[If the abuse results in great bodily harm or death to the~~
8 ~~child, he is guilty of a first degree felony.]~~

9 F. Whoever commits abuse of a child who is twelve
10 years of age or older that results in great bodily harm or
11 death to the child is guilty of a first degree felony.

12 G. Whoever commits abuse of a child who is less
13 than twelve years of age that results in great bodily harm to
14 the child is guilty of a first degree felony.

15 H. Whoever commits abuse of a child who is less
16 than twelve years of age that results in the child's death is
17 guilty of a first degree felony resulting in the death of a
18 human being.

19 ~~[F.]~~ I. Evidence that demonstrates that a child has
20 been knowingly, intentionally or negligently allowed to enter
21 or remain in a motor vehicle, building or any other premises
22 that contains chemicals and equipment used or intended for use
23 in the manufacture of a controlled substance shall be deemed
24 prima facie evidence of abuse of the child.

25 ~~[G.]~~ J. A person who leaves an infant less than

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1 ninety days old at a hospital may be prosecuted for abuse of
2 the infant for actions of the person occurring before the
3 infant was left at the hospital."

4 Section 2. Section 31-18-15 NMSA 1978 (being Laws 1977,
5 Chapter 216, Section 4, as amended) is amended to read:

6 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
7 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
8 DEDUCTIONS.--

9 A. If a person is convicted of a noncapital felony,
10 the basic sentence of imprisonment is as follows:

11 (1) for a first degree felony resulting in the
12 death of a human being, life imprisonment;

13 [~~(1)~~] (2) for a first degree felony, eighteen
14 years imprisonment;

15 [~~(2)~~] (3) for a second degree felony resulting
16 in the death of a human being, fifteen years imprisonment;

17 [~~(3)~~] (4) for a second degree felony for a
18 sexual offense against a child, fifteen years imprisonment;

19 [~~(4)~~] (5) for a second degree felony, nine
20 years imprisonment;

21 [~~(5)~~] (6) for a third degree felony resulting
22 in the death of a human being, six years imprisonment;

23 [~~(6)~~] (7) for a third degree felony for a
24 sexual offense against a child, six years imprisonment;

25 [~~(7)~~] (8) for a third degree felony, three

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1 years imprisonment; or

2 [~~(8)~~] (9) for a fourth degree felony, eighteen
3 months imprisonment.

4 B. The appropriate basic sentence of imprisonment
5 shall be imposed upon a person convicted and sentenced pursuant
6 to Subsection A of this section, unless the court alters the
7 sentence pursuant to the provisions of Section 31-18-15.1,
8 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

9 C. The court shall include in the judgment and
10 sentence of each person convicted and sentenced to imprisonment
11 in a corrections facility designated by the corrections
12 department authority for a period of parole to be served in
13 accordance with the provisions of Section 31-21-10 NMSA 1978
14 after the completion of any actual time of imprisonment and
15 authority to require, as a condition of parole, the payment of
16 the costs of parole services and reimbursement to a law
17 enforcement agency or local crime stopper program in accordance
18 with the provisions of that section. The period of parole
19 shall be deemed to be part of the sentence of the convicted
20 person in addition to the basic sentence imposed pursuant to
21 Subsection A of this section together with alterations, if any,
22 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
23 31-18-16.1 or 31-18-17 NMSA 1978.

24 D. When a court imposes a sentence of imprisonment
25 pursuant to the provisions of Section 31-18-15.1, 31-18-16,

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1 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the
2 basic sentence of imprisonment provided pursuant to the
3 provisions of Subsection A of this section, the period of
4 parole shall be served in accordance with the provisions of
5 Section 31-21-10 NMSA 1978 for the degree of felony for the
6 basic sentence for which the inmate was convicted. For the
7 purpose of designating a period of parole, a court shall not
8 consider that the basic sentence of imprisonment was suspended
9 or deferred and that the inmate served a period of imprisonment
10 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
11 31-18-16.1 or 31-18-17 NMSA 1978.

12 E. The court may, in addition to the imposition of
13 a basic sentence of imprisonment, impose a fine not to exceed:

14 (1) for a first degree felony resulting in the
15 death of a human being, seventeen thousand five hundred dollars
16 (\$17,500);

17 [~~(1)~~] (2) for a first degree felony, fifteen
18 thousand dollars (\$15,000);

19 [~~(2)~~] (3) for a second degree felony resulting
20 in the death of a human being, twelve thousand five hundred
21 dollars (\$12,500);

22 [~~(3)~~] (4) for a second degree felony for a
23 sexual offense against a child, twelve thousand five hundred
24 dollars (\$12,500);

25 [~~(4)~~] (5) for a second degree felony, ten

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1 thousand dollars (\$10,000);

2 [~~(5)~~] (6) for a third degree felony resulting
3 in the death of a human being, five thousand dollars (\$5,000);

4 [~~(6)~~] (7) for a third degree felony for a
5 sexual offense against a child, five thousand dollars (\$5,000);

6 or

7 [~~(7)~~] (8) for a third or fourth degree felony,
8 five thousand dollars (\$5,000).

9 F. When the court imposes a sentence of
10 imprisonment for a felony offense, the court shall indicate
11 whether or not the offense is a serious violent offense, as
12 defined in Section 33-2-34 NMSA 1978. The court shall inform
13 an offender that the offender's sentence of imprisonment is
14 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
15 and 33-2-38 NMSA 1978. If the court fails to inform an
16 offender that the offender's sentence is subject to those
17 provisions or if the court provides the offender with erroneous
18 information regarding those provisions, the failure to inform
19 or the error shall not provide a basis for a writ of habeas
20 corpus.

21 G. No later than October 31 of each year, the New
22 Mexico sentencing commission shall provide a written report to
23 the secretary of corrections, all New Mexico criminal court
24 judges, the administrative office of the district attorneys and
25 the chief public defender. The report shall specify the

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1 average reduction in the sentence of imprisonment for serious
2 violent offenses and nonviolent offenses, as defined in Section
3 33-2-34 NMSA 1978, due to meritorious deductions earned by
4 prisoners during the previous fiscal year pursuant to the
5 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
6 NMSA 1978. The corrections department shall allow the
7 commission access to documents used by the department to
8 determine earned meritorious deductions for prisoners."

9 Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980,
10 Chapter 28, Section 1, as amended) is amended to read:

11 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

12 A. An inmate of an institution who was sentenced to
13 life imprisonment as the result of the commission of a capital
14 felony, who was sentenced to life imprisonment as the result of
15 a conviction for a first degree felony resulting in the death
16 of a human being, who was convicted of three violent felonies
17 and sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA
18 1978 or who was convicted of two violent sexual offenses and
19 sentenced pursuant to Subsection A of Section 31-18-25 NMSA
20 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a
21 parole hearing after he has served thirty years of his
22 sentence. Before ordering the parole of an inmate sentenced to
23 life imprisonment, the board shall:

24 (1) interview the inmate at the institution
25 where he is committed;

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- 1 (2) consider all pertinent information
2 concerning the inmate, including:
3 (a) the circumstances of the offense;
4 (b) mitigating and aggravating
5 circumstances;
6 (c) whether a deadly weapon was used in
7 the commission of the offense;
8 (d) whether the inmate is a habitual
9 offender;
10 (e) the reports filed under Section
11 31-21-9 NMSA 1978; and
12 (f) the reports of such physical and
13 mental examinations as have been made while in an institution;
14 (3) make a finding that a parole is in the
15 best interest of society and the inmate; and
16 (4) make a finding that the inmate is able and
17 willing to fulfill the obligations of a law-abiding citizen.

18 If parole is denied, the inmate sentenced to life
19 imprisonment shall again become entitled to a parole hearing at
20 two-year intervals. The board may, on its own motion, reopen
21 any case in which a hearing has already been granted and parole
22 denied.

23 B. Unless the board finds that it is in the best
24 interest of society and the parolee to reduce the period of
25 parole, a person who was convicted of a capital felony shall be

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1 required to undergo a minimum period of parole of five years.
2 During the period of parole, the person shall be under the
3 guidance and supervision of the board.

4 C. Except for sex offenders as provided in Section
5 31-21-10.1 NMSA 1978, an inmate who was convicted of a first,
6 second or third degree felony and who has served the sentence
7 of imprisonment imposed by the court in an institution
8 designated by the corrections department shall be required to
9 undergo a two-year period of parole. An inmate who was
10 convicted of a fourth degree felony and who has served the
11 sentence of imprisonment imposed by the court in an institution
12 designated by the corrections department shall be required to
13 undergo a one-year period of parole. During the period of
14 parole, the person shall be under the guidance and supervision
15 of the board.

16 D. Every person while on parole shall remain in the
17 legal custody of the institution from which he was released,
18 but shall be subject to the orders of the board. The board
19 shall furnish to each inmate as a prerequisite to his release
20 under its supervision a written statement of the conditions of
21 parole that shall be accepted and agreed to by the inmate as
22 evidenced by his signature affixed to a duplicate copy to be
23 retained in the files of the board. The board shall also
24 require as a prerequisite to release the submission and
25 approval of a parole plan. If an inmate refuses to affix his

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1 signature to the written statement of the conditions of his
2 parole or does not have an approved parole plan, he shall not
3 be released and shall remain in the custody of the institution
4 in which he has served his sentence, excepting parole, until
5 such time as the period of parole he was required to serve,
6 less meritorious deductions, if any, expires, at which time he
7 shall be released from that institution without parole, or
8 until such time that he evidences his acceptance and agreement
9 to the conditions of parole as required or receives approval
10 for his parole plan or both. Time served from the date that an
11 inmate refuses to accept and agree to the conditions of parole
12 or fails to receive approval for his parole plan shall reduce
13 the period, if any, to be served under parole at a later date.
14 If the district court has ordered that the inmate make
15 restitution to a victim as provided in Section 31-17-1 NMSA
16 1978, the board shall include restitution as a condition of
17 parole. The board shall also personally apprise the inmate of
18 the conditions of parole and his duties relating thereto.

19 E. When a person on parole has performed the
20 obligations of his release for the period of parole provided in
21 this section, the board shall make a final order of discharge
22 and issue him a certificate of discharge.

23 F. Pursuant to the provisions of Section 31-18-15
24 NMSA 1978, the board shall require the inmate as a condition of
25 parole:

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1 (1) to pay the actual costs of his parole
2 services to the adult probation and parole division of the
3 corrections department for deposit to the corrections
4 department intensive supervision fund not exceeding one
5 thousand eight hundred dollars (\$1,800) annually to be paid in
6 monthly installments of not less than twenty-five dollars
7 (\$25.00) and not more than one hundred fifty dollars (\$150), as
8 set by the appropriate district supervisor of the adult
9 probation and parole division, based upon the financial
10 circumstances of the defendant. The defendant's payment of the
11 supervised parole costs shall not be waived unless the board
12 holds an evidentiary hearing and finds that the defendant is
13 unable to pay the costs. If the board waives the defendant's
14 payment of the supervised parole costs and the defendant's
15 financial circumstances subsequently change so that the
16 defendant is able to pay the costs, the appropriate district
17 supervisor of the adult probation and parole division shall
18 advise the board and the board shall hold an evidentiary
19 hearing to determine whether the waiver should be rescinded;
20 and

21 (2) to reimburse a law enforcement agency or
22 local crime stopper program for the amount of any reward paid
23 by the agency or program for information leading to his arrest,
24 prosecution or conviction.

25 G. The provisions of this section shall apply to

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1 all inmates except geriatric, permanently incapacitated and
2 terminally ill inmates eligible for the medical and geriatric
3 parole program as provided by the Parole Board Act."

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